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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

No. CR 2008-1339

Div. 6

**DEFENDANT'S MOTION TO  
FILE RULE 15.9 APPLICATIONS  
EX PARTE, IN CAMERA, AND  
UNDER SEAL AND FOR AN  
EXPEDITED EX PARTE, IN  
CAMERA, UNDER SEAL  
HEARING**

Defendant Steven C. DeMocker, by and through counsel, hereby moves this court under Rule 15.9 (b) to permit filing of Rule 15.9 (d) applications *ex parte*, *in camera* and under seal and to hold expeditiously an *ex parte*, *in camera*, under seal hearing regarding Rule 15.9(d) applications.

**ARGUMENT**

Counsel anticipates making application to this Court for appointments under Rule 15.9(d). An initial deadline set in May for these applications is July 13, 2009. As

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DIVISION 6

1 part of the application process, counsel will be required to reveal ongoing investigation  
2 and other defense planning decisions. Rule 4.1 of the ABA Supplementary Guidelines  
3 for the Mitigation Function of Defense Teams in Death Penalty Cases directs that  
4 application for mitigation services funding should be conducted *ex parte*, *in camera* and  
5 under seal. *See* Supplementary Guidelines for the Mitigation Function of Defense  
6 Teams in Death Penalty Cases, 36 HOFSTRA L. REV. 677, at 680 (2008). The ABA  
7 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty  
8 Cases is in accord with respect to other defense resources. *See* Commentary to ABA  
9 Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty  
10 Cases Standard 10.4 “The Defense Team” (2003) (“Because the defense should not be  
11 required to disclose privileged communications or strategy to the prosecution in order to  
12 secure these resources, counsel should insist on making such requests *ex parte* and *in*  
13 *camera*.”) Counsel are required to abide by the ABA Guidelines. *See* Ariz. R. Crim P.  
14 6.8 (b) 1. (iii) (lead capital counsel “[s]hall be familiar with and guided by the  
15 performance standards in the 2003 American Bar Association Guidelines for the  
16 Appointment and Performance of Defense Counsel in Death Penalty Cases”). For these  
17 reasons, confidentiality of the applications is required to protect Mr. DeMocker’s Sixth  
18 Amendment and other rights. Therefore, Mr. DeMocker, by and through counsel,  
19 hereby requests that this Court permit the filing of Rule 15.9 applications *ex parte*, *in*  
20 *camera* and under seal and that the Court hold an *ex parte*, *in camera*, under seal  
21 hearing to rule on counsel’s initial Rule 15.9 applications on or before July 21, 2009. A  
22 quick resolution of the applications is required to permit the defense team to continue  
23 work on critical aspects of the case. A proposed order is attached.

#### 24 CONCLUSION

25 For these reasons, and any adduced at any hearing on this matter, Mr. DeMocker  
26 requests that the Court permit the filing of Rule 15.9 applications *ex parte*, *in camera*  
27

1 and under seal and that the court hold an *ex parte, in camera*, under seal hearing to rule  
2 on counsel's initial Rule 15.9 applications on or before July 21, 2009.

3 DATED this 6<sup>th</sup> day of July, 2009.

4  
5 By: 

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9 OSBORN MALEDON, P.A.  
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14 Attorneys for Defendant

15 ORIGINAL of the foregoing filed  
16 this 6<sup>th</sup> day of July, 2009, with:

17 Jeanne Hicks,  
18 Clerk of the Court  
19 Yavapai County Superior Court  
20 120 S. Cortez  
21 Prescott, AZ 86303

22 COPIES of the foregoing hand delivered  
23 this 6<sup>th</sup> day of July, 2009, to:

24 The Hon. Thomas B. Lindberg  
25 Judge of the Superior Court  
26 Division Six  
27 120 S. Cortez  
28 Prescott, AZ 86303

Joseph C. Butner, Esq.  
Office of the Yavapai County Attorney  
By e-mail and delivery to courthouse drawer  
Prescott, AZ

